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**Attorney For Plaintiff**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**Mark Barnette**, an Individual,  
  
Plaintiff,

vs.

**Priority Auto Wholesale, LLC.**, an Oregon  
limited liability corporation,  
  
Defendant.

Case No.

**COMPLAINT**

1. Failure to Pay Minimum Wages  
(Federal FLSA Claim)
2. Failure to Timely Pay Wages

**DEMAND FOR JURY TRIAL**

Plaintiff brings this action against Defendant, Priority Auto Wholesale, LLC. (hereafter, "Defendant") and alleges the following upon information and belief. Those allegations concerning Plaintiff are alleged upon personal knowledge.

**INTRODUCTION**

1. Plaintiff files this action to recover minimum wages, liquidated damages, penalty wages, pre- and post-judgment interest and attorney fees and costs for Defendant's failure to pay all minimum wages due and owing and for Defendant's failure to pay all wages upon termination.

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2. Defendant is a limited liability corporation with its principal place of business in Portland, Oregon.
3. Defendant performs more than \$500,000 gross business per year.
4. Defendant's employees regularly engage in interstate commerce.
5. Defendant is subject to the requirements of the Fair Labor Standards Act.
6. Plaintiff was an hourly employee of Defendant in Portland, Oregon. Plaintiff was hired in October 2009 and was terminated by Defendant in December 2009. Defendant failed to pay minimum wage for all hours Plaintiff worked in November 2009. By failing to pay the minimum wages alleged herein, Defendant failed to pay Plaintiff all wages when due upon termination, as required by Oregon law.
7. Plaintiff's claims seek minimum wages, penalty wages, liquidated damages, pre- and post-judgment interest, costs and attorney fees for Defendant's failure to pay all minimum wages and all wages when due upon termination, all as required by the laws of the states of Oregon and pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 ("FLSA").

#### **JURISDICTION & VENUE**

8. This Court has subject matter jurisdiction of the Fair Labor Standard Act, 29 U.S.C. 201 et. seq. ("FLSA") claims under federal question jurisdiction pursuant to 28 U.S.C. § 1331 and under 28 U.S.C. § 216(b).
9. This Court has supplemental jurisdiction over the state law claim under 28 U.S.C. § 1367(a). Both the Federal and State claims alleged herein arose from a common nucleus of operative facts. The State action is so related to the Federal claim that they form part of the same case or controversy, and the actions would ordinarily be expected to be tried in one judicial proceeding.
10. Venue is proper in the District of Oregon under 28 U.S.C. § 1391(b) and (c), as the employment practices alleged herein by Plaintiff were committed in Oregon.

**PARTIES**

11. At all material times, Plaintiff was an employees of Defendant in Oregon. Defendant is subject to the wage and hour provisions of the FLSA and the wage and hour laws of Oregon.

12. Defendant is registered in Oregon as a limited liability company with its principal place of business in Portland, Oregon.

13. At the time of filing this complaint, Plaintiff resides in and is a citizen of Oregon.

**FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

14. Plaintiff worked for Defendant in Oregon. Plaintiff performed the services required of him by Defendant during his employment.

15. Plaintiff worked for Defendant as a car salesman. Plaintiff agreed to work for Defendant at the minimum wage rate or on commission, whichever was greater, for all hours he worked.

16. Defendant failed to keep track of Plaintiff's hours worked.

17. Plaintiff worked for Defendant six days a week in November 2009.

18. Defendant failed to pay Plaintiff at the then-prevailing minimum wage rate for all hours he worked in November 2009 for Defendant.

19. Defendant failed to pay Plaintiff the minimum wages he was due upon his termination.

20. Because Defendant failed to pay minimum wage for all hours worked and failed to pay all wages when due, Defendant violated the requirements of the FLSA and the laws and regulations of Oregon.

21. Consequently, Defendant owes Plaintiff minimum wages plus liquidated damages under the FLSA and penalty wages under Or. Rev. Stat. §§ 652.140 and 652.150.

22. Defendant intentionally failed to pay Plaintiff at the minimum wage rate for each hour Plaintiff worked for Defendant.

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23. Defendant failed to make timely payment of all wages as alleged herein when required by the laws of Oregon, when employment with Defendant ended for Plaintiff.

24. Defendant's conduct in failing to pay all wages as alleged herein upon termination of employment was willful.

25. Defendant's conduct in failing to pay all minimum wages as required under the FLSA was willful.

**FIRST CAUSE OF ACTION**  
**(Failure to Pay Minimum Wage)**

26. Plaintiff incorporates the allegations contained in all preceding paragraphs as though fully set forth herein.

27. At all times material herein, Plaintiff was employed by Defendant.

28. During November 2009, Defendant failed to pay minimum wages for all hours worked to Plaintiff as required by the FLSA..

29. Plaintiff is entitled to be paid at the higher of the minimum wage rates as provided by the FLSA and Oregon law.

30. During the course of Plaintiff's employment, Defendant allowed, suffered, and permitted Plaintiff to perform work for the benefit of Defendant.

31. Defendant failed and refused to compensate Plaintiff for all hours of work performed at the then-prevailing hourly rate of pay for each and all hours worked.

32. As a result, Plaintiff is entitled to minimum wages pursuant to the FLSA.

33. Defendant's conduct in failing to pay Plaintiff for each and all hours worked at the then prevailing minimum wage rates was willful, and there remains due and unpaid minimum wages in amounts to be determined.

34. Plaintiff seeks damages for failure to pay minimum wages for each and all hours worked; liquidated damages under the FLSA; pre-judgment and post-judgment interest on all damage amounts, plus costs and attorney fees.

## **SECOND CAUSE OF ACTION**

### **(Late Payment of Wages at End of Employment)**

35. Plaintiff incorporates the allegations contained in all preceding paragraphs as though fully set forth herein.

36. Plaintiff has minimum wages and liquidated damages that remain due and owing. See First Cause of Action.

37. Defendant terminated Plaintiff's employment on or about December 11, 2009.

38. Defendant issued a final paycheck to Plaintiff on or about December 11, 2009 which did not include the minimum wages subject to this complaint.

39. Defendant, by failing to pay all wages as set out in Plaintiff's First Cause of Action, willfully failed to pay all wages upon termination under Or. Rev. Stat. §§ 652.140 and 652.150.

40. In failing to pay all wages at termination, Defendant was a free agent.

41. In failing to pay all wages at termination, Defendant determined its own action.

42. Defendant knew Plaintiff's employment with Defendant ended.

43. Defendant, or any of its employees, possessed all information regarding the hours worked by Plaintiff and the amount of wages due Plaintiff.

44. Defendant was required to know the hours worked by Plaintiff.

45. Defendant was capable of paying all Plaintiff's wages earned and due at termination.

46. Plaintiff is entitled to 30 days of continuing penalty wages under Or. Rev. Stat. §§ 652.140 and 652.150.

47. Plaintiff seeks up to 30 days of penalty wages for Oregon violations, plus costs, pre-judgment and post-judgment interest, disbursements, and attorney fees, pursuant to Or. Rev. Stat. §§ 652.140, 652.150 and ORS 652.200.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

1. For all unpaid minimum wages and liquidated damages under the FLSA, 29 U.S.C. §§ 206, 207, and 216(b) based upon Defendant's intentional and willful failure to pay minimum wages, 29 U.S.C. §§ 206, 207, 216(b), and 255;
2. For penalty wages under Or. Rev. Stat. §§ 652.140 and 652.150, for Defendant's failure to pay all minimum wages and failure to pay final wages when required by law;
3. For costs or disbursements, pre-judgment and post-judgment interest at the respective rates, and for costs of litigation and attorney fees pursuant to the FLSA and ORS 652.200; and
4. For such further or alternative relief in favor of Plaintiff as the Court deems appropriate.

Plaintiff hereby demand a jury trial on all issues triable by jury.

Dated: August 21, 2009.

/s/ David A. Schuck  
DAVID A. SCHUCK, Esquire  
OSB #99356